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22 *and Nichicon (America) Corporation*

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UNITED STATES COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST
LITIGATION

THIS DOCUMENT RELATES TO:
DIRECT PURCHASER CLASS ACTION;
FLEXTRONICS INTERNATIONAL USA,
INC.'S INDIVIDUAL ACTION

Master file No. 3:14-cv-03264-JD

STIPULATION AND [PROPOSED]
ORDER REGARDING SCHEDULING OF
PHASE II FTAIA SUMMARY
JUDGMENT MOTIONS AS TO
FLEXTRONICS

1 Plaintiff Flextronics International USA, Inc. (“Flextronics”) and the “Flextronics
2 Defendants”¹ jointly request that the Court set a separate Phase II FTAIA briefing schedule as to
3 Flextronics. This issue was not addressed in the Court’s Amended Scheduling Order in accordance
4 with the parties’ request for additional time to meet and confer with regard to the Flextronics
5 individual action. The schedule requested herein will not delay or affect other deadlines in this
6 consolidated litigation.
7

8 As the parties have noted in prior briefing, Flextronics’s claims raise individual FTAIA
9 arguments based on facts unique to Flextronics. As a result, the Court’s ruling with regard to the
10 DPP’s FTAIA arguments may inform but will not resolve Flextronics’s claims arising from arguably
11 foreign commerce. Moreover, resolution of Flextronics’s individual FTAIA issues requires the
12 parties to continue and complete ongoing efforts to negotiate and resolve several complex discovery
13 issues. This process cannot be completed on the schedule Defendants and the DPPs agreed upon.
14 An attempt to resolve Flextronics’s FTAIA arguments on the same schedule as the DPPs would
15 needlessly increase the litigation burden of both Flextronics and the Flextronics Defendants without
16 any benefit to the pace or efficiency of this overall litigation.
17

18 Flextronics and the Flextronics Defendants therefore request that the Court schedule
19 Flextronics’s FTAIA briefing to take place as follows:
20

- 21 • The Flextronics Defendants’ opening brief shall be due April 21, 2017, approximately
22 30 days after the March 23, 2017 hearing on the DPP’s FTAIA-related claims.

23 ¹ The “Flextronics Defendants” consist of KEMET Corporation; KEMET Electronics Corporation;
24 Nippon Chemi-Con Corporation; United Chemi-Con, Inc.; Hitachi Chemical Co., Ltd.; Hitachi AIC
25 Inc.; Hitachi Chemical Co. America, Ltd.; Nichicon Corporation; Nichicon (America) Corporation;
26 AVX Corporation; Rubycon Corporation; Rubycon America Inc.; ELNA Co., Ltd.; ELNA America
27 Inc.; Matsuo Electric Co., Ltd.; TOSHIN KOGYO Co., Ltd.; Holy Stone Enterprise Co., Ltd.;
28 Milestone Global Technology, Inc. (D/B/A HolyStone International); ROHM Co., Ltd.; ROHM
Semiconductor U.S.A., LLC; Okaya Electric Industries Co., Ltd.; Okaya Electric America Inc.;
Taitso Corporation; Taitso America, Inc.; Shinyei Kaisha; Shinyei Technology Co., Ltd.; Shinyei
Capacitor Co., Ltd.; Shinyei Corporation of America, Inc.; Nitsuko Electronics Corporation; Nissei
Electric Co., Ltd.; Soshin Electric Co., Ltd.; Soshin Electronics of America, Inc.; Shizuki Electric
Co., Inc.; and American Shizuki Corporation (collectively, the “Flextronics Defendants”).

- Flextronics's response shall be due on May 19, 2017²; and
- The Flextronics Defendants' Reply shall be due on June 16, 2017.

This proposed briefing schedule will not require changing any of the other deadlines in the Amended Scheduling Order nor delay the orderly progress of this consolidated litigation.

MEMORANDUM IN SUPPORT

This stipulation arises from Flextronics's unique position in these consolidated cases. As an individual direct action litigant, Flextronics is advancing theories regarding the FTAIA that the DPPs are not, including theories based on: (1) Flextronics's purchasing processes during the alleged conspiracy period; (2) the purchasing processes of certain third-party Flextronics customers during the alleged conspiracy period; (3) commercial practices related to imports of capacitors purchased by Flextronics into the United States; (4) import regulations and commercial practices applicable to shipments of capacitors to Mexico; and (5) Flextronics's and/or its affiliates' sales of finished goods containing capacitors in the United States. In light of the Court's Phase I order, these individual theories will require supplementation of discovery, and potentially discovery from third parties, that is significantly more extensive and complex than that required from the DPPs.

Unlike the named DPPs, Flextronics's claims involve its purchase of hundreds of millions of capacitors and millions of transactions involving finished goods sold by Flextronics that incorporate capacitors. Data related to these transactions comes from dozens of Flextronics entities around the world. In addition, Flextronics's theories require further evaluation of facts relating to the negotiations of pricing agreements over the course of the alleged conspiracy. While the parties are in the process of discussing certain stipulations for purposes of Defendants' motion in order to minimize potential discovery burdens on both sides, these discussions and the supplementation of

² This date assumes that the Flextronics Defendants file a single brief. If separate briefs are filed, the parties will confer further regarding an appropriate due date for Flextronics's Opposition.

1 related discovery information involve vastly more data and cannot be completed on the schedule
2 applicable to the DPP's FTAIA issues.³

3 Given this backdrop, both sides recognize the need for a briefing schedule for Phase II
4 FTAIA motions directed to Flextronics that is different from that of the DPPs. *See* Dkt. #1373,
5 footnotes 1-3. As the parties have noted, the proposed schedule for Flextronics will not impact the
6 class certification schedule, *see id.*, at footnotes 1 and 2, because Flextronics's individual FTAIA
7 arguments do not implicate the class certification standards of Fed. R. Civ. P. 23. Nor will the
8 proposed Flextronics schedule impact other deadlines: briefing on Flextronics's FTAIA arguments
9 will be complete long before the deadlines for summary judgment or the submission of expert
10 reports. The proposed schedule will maximize the efficient resolution of Flextronics's claims
11 without impacting the overall progress of this consolidated litigation.
12

13 14 CONCLUSION

15 For the reasons set forth herein, Flextronics and the Flextronics Defendants respectfully
16 request that the Court order the schedule proposed herein for resolution of Flextronics's individual
17 FTAIA arguments.
18

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21 Dated: December 9, 2016

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26 ³ For example, the parties are meeting and conferring regarding a stipulation to address arguments
27 that implicate Flextronics's finished goods sales transaction data. The intent is to develop stipulated
28 facts that permit Defendants to evaluate and respond to Flextronics's FTAIA arguments regarding
the sale of finished goods without the substantial burden that a full production and review of such
transaction data, which involves products and data sets that are not involved in the DPP and IPP
case, would place on both sides.

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1 Pursuant to Local Rule 5.1(i)(3), I attest that all other signatories listed, and on whose behalf
2 the filing is submitted, concur in the filing's content and have authorized in writing.

3
4 Dated: December 9, 2016

/s/ Michael Martinez
Michael Martinez

1 **[PROPOSED] STIPULATED ORDER**

2
3 WHEREAS, Plaintiff Flextronics International USA, Inc. (“Flextronics”) and the defendants
4 whom Flextronics has sued (the “Flextronics Defendants”) have further conferred on a schedule for
5 FTAIA Phase II summary judgment briefing following the Court’s issuance of the Amended
6 Scheduling Order (Dkt. #1405),

7
8 IT IS HEREBY STIPULATED AND AGREED by and between counsel for Flextronics and
9 the Flextronics Defendants that the Phase II FTAIA briefing schedule in the Flextronics action
10 proceed as follows:

- 11
- 12 • The Flextronics Defendants’ opening brief shall be due April 21, 2017;
 - 13 • Flextronics’ response shall be due on May 19, 2017⁴; and
 - 14 • The Flextronics Defendants’ Reply shall be due on June 16, 2017.

15 The undersigned parties jointly and respectfully request that the Court enter this stipulation
16 as an order.

17
18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 Dated: _____

20 _____
Honorable James Donato

21 United States District Court Judge
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28 ⁴ This date assumes that the Flextronics Defendants file a single brief. If separate briefs are filed, the parties will confer further regarding an appropriate due date for Flextronics’s Opposition.